IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.68 OF 2004

Naumann Mendonca Braganca,
major, resident of Gausavaddo,
Mapusa, Bardez, Goa. ... Petitioner.

Versus

Oswal Cordeiro alias Osey Cordeiro,
major, resident of Calizor,
Moira, Bardez, Goa. ... Respondent.

Mr. Dajvip V. Patkar, Advocate for the petitioner.

Mr. P.A. Kholkar, Advocate for the respondent.

CORAM : DR. S. RADHAKRISHNAN, J.
DATE : OCTOBER, 13 2006.

ORAL ORDER :

1. By this petition the petitioner/defendant is challenging the Order of the learned Civil Judge Senior Division dated 1.11.2003 whereby the application filed by the petitioner/defendant before the Trial Court seeking permission to produce certain documents was rejected by the Trial Court by the said Order.

2. The brief facts are that the plaintiff/respondent has filed this suit for recovery of money against the defendant in the sum of

Rs.3,00,000/- contending that the amount was advanced as a friendly loan to the defendant alongwith interest at the rate of 10% per annum.

3. The defendant had filed a written statement, thereafter the written statement was allowed to be amended wherein, in paragraph 19, 20 and 21 the defendant has averred as under :-

> "19. The defendant further states and submits that the plaintiff is in the business of money lending and has in fact filed number of cases for recover of money advanced by way of loans. The defendant has so far obtained information as regards filing of cases against one Ravindra Navelkar. The defendant is in the process of obtaining information as regards some other persons against whom the plaintiff has alsos filed similar cases.
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> 20. That the averments in the plaint disclose that the promissory note was taken as against the money advanced to the defendant by way of loan.
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> 21. That the relief in the present suit is barred and prohibited under section 14 of the Goa money Lenders Act 2001. No court is entitled to pass a decree in favour of a money lender in any suit unless such a money lender had a valid license to operate as a money lender. The plaintiff does not hold a license to operate as a money lender and

has not registered himself as a money lender with 15 days after coming into force of the said Act. The suit is therefore prohibited by law and barred under section 14 and 15 of the said Act".

4. In the light of the above, the petitioner/defendant had made an application for production of certain documents contending that the petitioner/defendant had subsequently discovered additional evidence to substantiate his contention that the suit was barred by Money Lenders Act, since the plaintiff was carrying out money lending business and during the course of the same, he advanced loans to various persons and the money which was advanced to the petitioner/defendant was not of friendly loan. The petitioner/defendant also relied in criminal proceedings which were initiated by the respondent/plaintiff with regard to cheque bouncing cases.

5. The reply filed to the said application, does not categorically deny carrying on the business of Money Lending but only states that the allegations were false to the knowledge of the petitioner/defendant and that the documents sought were irrelevant to the above case.

6. Perused the Judgment of the Trial Court dated 1.11.2003. Learned Counsel appearing for the petitioner/defendant strongly

contended to substantiate the above said issue which has been subsequently framed that the suit was barred under section 14 and 15 of Goa Money Lenders Act, 2001, and if that be so, the petitioner/defendant ought to have been allowed to produce the aforesaid documents for which the application was made.

7. The learned Counsel appearing on behalf of the respondent/plaintiff contended that the learned Trial Judge by the Order dated 1.11.2003 has come to the conclusion that they are not relevant. As such the impugned Order ought not to be interfered with.

8. After hearing both the learned Counsel and after reading the pleading in the written statement, specially paragraph 19 to 21 (amended written statement) and also the subsequent issue raised with regard to bar under section 14 and 15 of Goa Money Lenders Act, 2001, the petitioner/defendant cannot be denied the opportunity to produce the evidence to substantiate such issue mainly on the ground that they may not be relevant.

9. Under the aforesaid facts and circumstances of the case, the learned Trial Judge had wrongly refused to exercise the jurisdiction vested in it to allow the application. Hence the impugned Order dated 1.11.2003 stands quashed and set aside and the application of the

petitioner/defendant for production of the aforesaid documents being Exhibit 24 seeking permission to produce the document is allowed. Rule is accordingly made absolute. The Trial Judge to dispose of the aforesaid Special Case No. 70/2001/A as expeditiously as possible.

DR. S. RADHAKRISHNAN, J.

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